

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JUL 30 2013 OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was a canine ranch and kennel business. It sought to employ the beneficiary permanently in the United States as a business manager. As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not established that it was operating at the time of the filing of the petition, that it had failed to establish its continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition, and that the petitioner had failed to demonstrate that the beneficiary meets the experience requirements of the position offered. Therefore, the director denied the petition with a finding of fraud.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

On May 31, 2013, this office notified the petitioner that according to publicly available records, [REDACTED] was not in good standing in the state of Florida, that it has been “administratively dissolved,” and that its current status is “inactive.”

If the petitioner is currently not in good standing, this is material to whether the job offer, as outlined on the immigrant petition filed by this organization, is a *bona fide* job offer. Moreover, any such concealment of the true status of the organization by the petitioner seriously compromises the credibility of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(stating that doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See id.*

This office allowed the petitioner 30 days in which to provide evidence that the state records were not accurate and that the petitioner remains in operation as a viable business. Counsel for the petitioner responded to the NOID on July 1, 2013; stating that the petitioning company had closed in September 2012. In addition, the petitioner was provided a copy of the status report for its organization as an attachment to the NOID dated May 31, 2013; indicating that according to the Florida Department of State’s Division of Corporations, the petitioner was administratively dissolved on September 28, 2012, for failure to file an annual report, and is listed as “inactive.” There has been no evidence submitted to rebut the State’s Division of Corporations status report. Thus, the appeal will be dismissed as moot.¹ Where the appeal is being dismissed as moot as a result

¹ In response to the AAO’s NOID dated May 31, 2013, counsel admits to the petitioning company having closed in September 2012, but, requests that the director’s fraud findings be addressed.

of the petitioner's inactive status, there is no valid job offer, and the issues raised on appeal will not be addressed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The appeal is dismissed.

Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case. Therefore, the issues on appeal will not be addressed where, as in the instant matter, the organization is no longer in business, no bona fide job offer exists, and the petition and appeal are therefore moot.